

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST
LITIGATION

CASE NO. 12-MD-02311

HON. MARIANNE O. BATTANI

In Re: HEATER CONTROL PANELS CASES

2:12-cv-00401-MOB-MKM

THIS RELATES TO:

2:16-cv-11109-MOB-MKM

**SETTLEMENT CLASS COUNSEL'S REPORT ON DISSEMINATION
OF NOTICE OF PROPOSED SETTLEMENTS WITH THE SUMITOMO, ALPS
AND TOKAI RIKA DEFENDANTS AND CLASS MEMBERS' RESPONSE**

Settlement Class Counsel submit the following report concerning the dissemination of notice pursuant to this Court's Order dated July 27, 2018 (2:12-cv-00401, Doc. No. 197) (the "Notice Order"), and Settlement Class members' response to the notice program. As described more fully below, notice was mailed to 72 potential Settlement Class members and published in accordance with the Notice Order. One request for exclusion was submitted as to each of the Sumitomo and Alps Settlement Classes. As a result of the later request for exclusion, the Alps Settlement Amount has been reduced to \$2,250,000. Under the terms of the Sumitomo settlement, the settlement amount of \$579,000 remains unchanged notwithstanding the request for exclusion from that Settlement Class. No requests for exclusion from the Tokai Rika Settlement Class were submitted; thus, the Tokai Rika settlement amount of \$1,875,000 remains unchanged as well. Accordingly, the total value of the settlement funds is \$4,704,000. No objections were filed to any of the three proposed settlements, to the proposed plan for distribution of settlement funds, or to

Settlement Class Counsel's request for an award of attorneys' fees and reimbursement of litigation costs and expenses, and incentive payments to the Class Representatives.

Settlement Class Counsel respectfully submit that the extremely low number of opt-outs and the complete absence of objections militate strongly in favor of approval of the proposed settlements, the proposed plan for distribution of settlement funds, and the request for attorneys' fees and litigation costs and expenses and incentive payments.

I. DISSEMINATION OF NOTICE TO THE CLASSES

Pursuant to the Court's Notice Order, on August 16, 2018, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the Notice and Claims Administrator retained by Direct Purchaser Plaintiff, mailed 72 copies of the Notice of Proposed Settlements of Direct Purchaser Class Action with the Sumitomo, Alps and Tokai Rika Defendants and Hearing on Final Settlement Approval and Related Matters, and Claim Form (the "Notice") to potential Settlement Class members by first class mail, postage prepaid. Declaration of Ryan Kao, Senior Project Manager for Epiq. Exhibit 1 at ¶ 6. Epiq also re-mailed returned notices for which updated addresses were obtained. *Id.* at ¶ 7. In addition, a copy of the Notice was (and remains) posted online at www.AutoPartsAntitrustLitigation.com, a website dedicated to this litigation. *Id.* at ¶ 9.

Also in accordance with the Notice Order, the Summary Notice of Proposed Settlements of Direct Purchaser Class Action with Sumitomo, Alps and Tokai Rika and Hearing on Settlement Approval and Related Matters ("Summary Notice") was published in *Automotive News* on August 27, 2018. *Id.* at ¶ 8. Additionally, an online banner notice appeared for a 21 day period on www.AutoNews.com, the digital version of *Automotive News*, and an Informational Press Release was issued nationwide on August 27, 2018 via PR Newswire's "Auto Wire," which targets auto industry trade publications. *Id.*

Notice to the Sumitomo, Alps and Tokai Rika Settlement Classes under Fed. R. Civ. P. 23 has, therefore, been provided as ordered by the Court.

II. ABSENCE OF OBJECTIONS TO THE PROPOSED SETTLEMENTS, THE PROPOSED DISTRIBUTION PLAN, AND REQUESTS FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND INCENTIVE PAYMENTS

The Notice advised that any objection to the proposed settlements, the proposed plan for distribution of settlement funds or to Settlement Class Counsel's request for an award of attorneys' fees and litigation costs and expenses and incentive payments to the Class Representatives had to be filed with the Clerk by October 5, 2018, with copies mailed to Settlement Class Counsel and to counsel for the Settling Defendants.

As of the date of the filing of this Report, no objection to any of the proposed settlements, the distribution plan, or to the fee and expense request or the incentive payment request has been filed with the Court or received by Settlement Class Counsel.

III. REQUESTS FOR EXCLUSION

The Notice further advised that requests for exclusion from the Sumitomo, Alps and Tokai Rika Settlement Classes had to be mailed to Settlement Class Counsel and to counsel for the Settling Defendants, postmarked no later than October 5, 2018. As of this date, Settlement Class Counsel have received one request for exclusion from the Sumitomo Settlement Class and one request for exclusion the Alps Settlement Class. *See Exhibit 1 at ¶ 11.* Both requests were timely submitted by American Honda Motor Co., Inc. No requests were submitted for exclusion from the Tokai Rika Settlement Class.

Settlement Class Counsel respectfully submit that, for the reasons set forth in the Memorandum in Support of Direct Purchaser Plaintiffs' Motion for Final Approval of Proposed Settlements with the Sumitomo, Alps and Tokai Rika Defendants and Proposed Plan for

Distribution of Settlement Funds (the “Final Approval Brief”) (2:12-cv-00401, Doc. No. 211), each of the Sumitomo, Alps and Tokai Rika settlements, is fair, reasonable and adequate under the relevant criteria, and warrants final approval.

IV. THE REACTION OF MEMBERS OF THE SETTLEMENT CLASSES SUPPORTS APPROVAL OF THE SETTLEMENTS, THE PROPOSED PLAN FOR DISTRIBUTION, AND THE REQUESTS FOR AN AWARD OF FEES AND EXPENSES AND INCENTIVE PAYMENTS

The reaction of the class has been recognized repeatedly by courts within this Circuit and elsewhere as a factor in evaluating the fairness, reasonableness, and adequacy of a proposed settlement. *See, e.g., Sheick v. Auto. Component Carrier LLC*, No. 2:09-cv-14429, 2010 WL 4136958, at *22 (E.D. Mich. Oct. 18, 2010) (“scarcity of objections – relative to the number of class members overall – indicates broad support for the settlement among Class Members.”); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 (E.D. Mich. 2003) (“That the overwhelming majority of class members have elected to remain in the Settlement Class, without objection, constitutes the ‘reaction of the class,’ as a whole, and demonstrates that the Settlement is ‘fair, reasonable, and adequate.’”); *In re Delphi Corp. Sec., Deriv. & “ERISA” Litig.*, 248 F.R.D. 483, 499 (E.D. Mich. 2008) (small number of opt-outs or objections is indicative of the adequacy of the settlement).

Individual notice of the proposed settlements was mailed to 72 potential Settlement Class members identified by Defendants. The Summary Notice was published in *Automotive News* on August 27, 2018, and on that same day an Informational Press Release was issued nationwide via PR Newswire’s “Auto Wire.” Additionally, an online banner notice appeared over a 21-day period on www.AutoNews.com, the digital version of *Automotive News*. The low number of opt-outs and total absence of objections militates strongly in favor of approval of the proposed settlements, the proposed plan for distribution of settlement funds, and the requests for attorneys’ fees and

reimbursement of litigation costs and expenses and incentive payments.

V. REQUEST FOR AN AWARD OF ATTORNEYS' FEES

As of July 31, 2018, Plaintiff's Counsel's lodestar, based upon historical rates, was \$6,210,650.38. Direct Purchaser Plaintiffs' Memorandum in Support of Their Motion for an Award of Attorney's Fees and Litigation Costs and Expenses, at 9 (the "Fee Brief") (2:12-cv-00401, Doc. No. 212). Since that date, Plaintiffs' Counsel have continued their efforts on behalf of the Settlement Classes by, among other things, drafting the final settlement approval submissions and overseeing the dissemination of notice to members of the Settlement Classes in accordance with the Notice Order. As a result of this continued effort, as of September 30, 2018, Plaintiff's Counsel's combined lodestar was \$6,293,914.63. Were the Court to award a fee of 33½% of the combined Sumitomo, Alps and Tokai Rika settlement proceeds of \$4,704,000, less litigation expenses of \$427,495.03, the multiplier on the more current lodestar would be a negative lodestar multiplier of approximately .23.

VI. CONCLUSION

Based upon the foregoing, and for the reasons set forth in Direct Purchaser Plaintiff's Final Approval Brief and Fee Brief, it is respectfully requested that the Court grant final approval of the proposed Sumitomo, Alps and Tokai Rika settlements, the proposed plan for distribution of settlement funds, and the requests for attorneys' fees and litigation costs and expenses, and incentive awards to the Class Representatives.

DATED: October 29, 2018

Respectfully submitted,

/s/David H. Fink
David H. Fink (P28235)
Darryl Bressack (P67820)
FINK + ASSOCIATES LAW

38500 Woodward Ave, Suite 350
Bloomfield Hills, MI 48304
Telephone: (248) 971-2500

Interim Liaison Counsel

Steven A. Kanner
William H. London
Michael E. Moskovitz
FREED KANNER LONDON
& MILLEN LLC
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015
Telephone: (224) 632-4500

Joseph C. Kohn
William E. Hoes
Douglas A. Abrahams
KOHN, SWIFT & GRAF, P.C.
1600 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 238-1700

Gregory P. Hansel
Randall B. Weill
Michael S. Smith
PRETI, FLAHERTY, BELIVEAU
& PACHIOS LLP
One City Center, P.O. Box 9546
Portland, ME 04112-9546
Telephone: (207) 791-3000

Eugene A. Spector
William G. Caldes
Jonathan M. Jagher
Jeffrey L. Spector
SPECTOR ROSEMAN & KODROFF, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300

Interim Co-Lead Class Counsel and Settlement Class Co-Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, I electronically filed the foregoing paper with the Clerk of the court using the ECF system which will send notification of such filing to all counsel of record registered for electronic filing.

FINK + ASSOCIATES LAW

By: /s/Nathan J. Fink
David H. Fink (P28235)
Darryl Bressack (P67820)
Nathan J. Fink (P75185)
38500 Woodward Ave; Suite 350
Bloomfield Hills, MI 48304
Telephone: (248) 971-2500
nfink@finkandassociateslaw.com